

MONTANA LEGISLATIVE HISTORY

Chapter 497 ~~491~~ 1983

Bill H _____ S _____ Original bill & history ☒ C

H. Committee on Business & Int

Hearing Date(s) 2-7 _____ C

2-8 _____ C

_____ C

_____ C

Date Out 3-9 _____ C

S. Committee on Business & Industry

Hearing Date(s) 3-9 _____ C

_____ C

_____ C

_____ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

TRANSMITTED TO SENATE: 2/10/83
REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY: 02/11/83
HEARING: 3/24/83
REPORT: 03/25/83, BE NOT CONCURRED IN, AS AMENDED
REPORT ADOPTED: 3/25/83
ON MOTION TO SUSPEND RULES TO CONSIDER ON 2ND AND 3RD READING: 3/26/83
2ND READING: 03/28/83 AYES: 34; NAYS: 12
3RD READING: 03/28/83 AYES: 34; NAYS: 13

RETURNED TO HOUSE WITH AMENDMENTS: 3/28/83
2ND READING: 04/01/83, BE CONCURRED IN AYES: 79; NAYS: 5
3RD READING: 04/04/83, BE CONCURRED IN AYES: 89; NAYS: 5

TRANSMITTED TO GOVERNOR: 04/13/83
SIGNED: 04/15/83, CHAPTER 537

HB 577 -- MCBRIDE, HALLIGAN -- PROVIDING THAT THE APPLICATION FEE FOR ADMISSION TO THE STATE BAR AND THE FEE FOR THE BAR EXAMINATION BE COMMENSURATE WITH COSTS AS DETERMINED BY THE SUPREME COURT; AMENDING
BY REQUEST OF: THE LEGISLATIVE AUDIT COMMITTEE

INTRODUCED: 01/29/83
REFERRED TO COMMITTEE ON JUDICIARY: 01/29/83
HEARING: 2/10/83
REPORT: 02/10/83, DO PASS
2ND READING: 02/14/83, DO PASS AYES: 87; NAYS: 2
3RD READING: 02/16/83, DO PASS AYES: 96; NAYS: 4

TRANSMITTED TO SENATE: 2/16/83
REFERRED TO COMMITTEE ON JUDICIARY: 02/17/83
HEARING: 3/4/83
REPORT: 3/7/83, BE CONCURRED IN
2ND READING: 03/09/83 AYES: 26; NAYS: 18
ON MOTION, 3/11/83, THAT THE BILL BE CONSIDERED ON 3RD READING ON 3/14/83. MOTION PASSED UNANIMOUSLY.
3RD READING: 03/14/83 AYES: 36; NAYS: 13

RETURNED TO HOUSE: 03/14/83

TRANSMITTED TO GOVERNOR: 03/21/83
SIGNED: 03/23/83, CHAPTER 220

HB 578 -- MILLER -- TO GIVE THE MONTANA INSURANCE DEPARTMENT JURISDICTION TO DETERMINE JURISDICTION OVER PROVIDERS OF HEALTH CARE BENEFITS; TO MAKE SUCH A PROVIDER SUBJECT TO THE MONTANA INSURANCE CODE IF IT CANNOT SHOW THAT IT IS SUBJECT TO ANOTHER JURISDICTION; AND TO REQUIRE DISCLOSURE TO PURCHASERS OF SUCH HEALTH CARE BENEFITS CONCERNING WHETHER OR NOT THE PLANS ARE FULLY INSURED.
BY REQUEST OF: THE MONTANA INSURANCE DEPARTMENT

INTRODUCED: 01/31/83
REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY: 01/31/83
HEARING: 2/7/83
REPORT: 02/08/83, DO PASS, AS AMENDED
2ND READING: 02/10/83, DO PASS AYES: 84; NAYS: 0
3RD READING: 02/12/83, DO PASS AYES: 98; NAYS: 0

TRANSMITTED TO SENATE: 02/12/83

REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY: 02/12/83

HEARING: 3/9/83

REPORT: 3/10/83, BE CONCURRED IN, AS AMENDED

2ND READING: 03/12/83 AYES: 46; NAYS: 0

3RD READING: 03/15/83 AYES: 49; NAYS: 0

RETURNED TO HOUSE WITH AMENDMENTS: 03/15/83

2ND READING: 03/31/83, BE CONCURRED IN AYES: 90; NAYS: 0

3RD READING: 04/01/83, BE CONCURRED IN AYES: 86; NAYS: 0

TRANSMITTED TO GOVERNOR: 04/12/83

SIGNED: 04/14/83, CHAPTER 497

HB 579 -- DOZIER, WILLIAMS -- TO AUTHORIZE COUNTY ASSESSOR MEMBERSHIP IN COUNTY ASSESSOR ASSOCIATIONS AND TO PROVIDE FOR COUNTY PAYMENT OF ASSOCIATED COSTS.

INTRODUCED: 01/31/83

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT: 01/31/83

HEARING: 2/12/83

REPORT: 02/14/83, DO PASS

2ND READING: 02/15/83, DO PASS AYES: 79; NAYS: 12

3RD READING: 02/17/83, DO PASS AYES: 90; NAYS: 10

TRANSMITTED TO SENATE: 2/17/83

REFERRED TO COMMITTEE ON STATE ADMINISTRATION: 02/18/83

HEARING: 3/4/83

REPORT: 03/04/83, BE CONCURRED IN

ON MOTION, 3/5/83, THAT THE BILL BE TAKEN FROM PRINTING AND REREFERRED TO THE COMMITTEE ON LOCAL GOVERNMENT. MOTION PASSED UNANIMOUSLY.

DIED IN SENATE COMMITTEE

HB 580 -- DARKO -- TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO SWIMMING POOLS AND BATHING PLACES; CLARIFYING THAT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES MAY SET SAFETY STANDARDS FOR PUBLIC SWIMMING POOLS AND BATHING PLACES; AMENDING

BY REQUEST OF: THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

INTRODUCED: 01/31/83

REFERRED TO COMMITTEE ON HUMAN SERVICES: 01/31/83

HEARING: 2/18/83

REPORT: 02/18/83, DO PASS

2ND READING: 02/21/83, DO PASS AYES: 73; NAYS: 8

3RD READING: 02/23/83, DO PASS AYES: 91; NAYS: 9

TRANSMITTED TO SENATE: 02/23/83

REFERRED TO COMMITTEE ON STATE ADMINISTRATION: 3/1/83

HEARING: 3/22/83

REPORT: 04/15/83, BE NOT CONCURRED IN. REPORT ADOPTED.

BILL KILLED.

HB 581 -- FABREGA, BERGENE, HEMSTAD, ET AL. -- TO REQUIRE THAT MOTOR VEHICLE FEES AND REIMBURSEMENT BE CONSIDERED IN COMPUTING EACH SCHOOL DISTRICT'S GENERAL FUND LEVY; AMENDING

INTRODUCED: 01/31/83

REFERRED TO COMMITTEE ON TAXATION: 01/31/83

HEARING: 2/9/83

HOUSE BILL NO. 578

INTRODUCED BY MILLER

BY REQUEST OF THE MONTANA INSURANCE DEPARTMENT

IN THE HOUSE

January 31, 1983	Introduced and referred to Committee on Business and Industry.
February 8, 1983	Committee recommend bill do pass as amended. Report adopted.
February 9, 1983	Bill printed and placed on members' desks.
February 10, 1983	Second reading, do pass.
February 11, 1983	Considered correctly engrossed.
February 12, 1983	Third reading, passed. Transmitted to Senate.

IN THE SENATE

February 12, 1983	Introduced and referred to Committee on Business and Industry.
March 10, 1983	Committee recommend bill be concurred in as amended. Report adopted.
March 12, 1983	Second reading, concurred in.
March 15, 1983	Third reading, concurred in. Ayes, 49; Noes, 0.

IN THE HOUSE

March 15, 1983

Returned to House with
amendments.

March 31, 1983

Second reading, amendments
concurred in.

April 1, 1983

Third reading, amendments
concurred in.

Sent to enrolling.

Reported correctly enrolled.

1 House BILL NO. 578
2 INTRODUCED BY Mulley
3 BY REQUEST OF THE MONTANA INSURANCE DEPARTMENT
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GIVE THE MONTANA
6 INSURANCE DEPARTMENT JURISDICTION TO DETERMINE JURISDICTION
7 OVER PROVIDERS OF HEALTH CARE BENEFITS; TO MAKE SUCH A
8 PROVIDER SUBJECT TO THE MONTANA INSURANCE CODE IF IT CANNOT
9 SHOW THAT IT IS SUBJECT TO ANOTHER JURISDICTION; AND TO
10 REQUIRE DISCLOSURE TO PURCHASERS OF SUCH HEALTH CARE
11 BENEFITS CONCERNING WHETHER OR NOT THE PLANS ARE FULLY
12 INSURED."
13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
15 Section 1. Short title. [This act] may be cited as the
16 "Jurisdiction to Determine Jurisdiction of Providers of
17 Health Care Benefits Act".
18 Section 2. Authority and jurisdiction of insurance
19 department. Notwithstanding any other provision of law and
20 except as provided in [this act], any person that provides
21 coverage in this state for medical, surgical, chiropractic,
22 physical therapy, speech pathology, audiology, professional
23 mental health, dental, hospital, or optometric expenses,
24 whether such coverage is by direct payment, reimbursement,
25 or otherwise, is presumed to be subject to the jurisdiction

1 of the department unless the person shows that while
2 providing such services it is subject to the jurisdiction of
3 another agency of this state or any subdivision thereof or
4 the federal government.

5 Section 3. How to show jurisdiction. A person or
6 entity may show that it is subject to the jurisdiction of
7 another agency of this state or any subdivision thereof or
8 the federal government by providing the commissioner with
9 the appropriate certificate, license, or other document
10 issued by the other governmental agency that permits or
11 qualifies it to provide those services.

12 Section 4. Examination. A person or entity which is
13 unable to show under [section 3] that it is subject to the
14 jurisdiction of another agency must submit to an examination
15 by the commissioner to determine the organization and
16 solvency of the person and to determine whether or not such
17 person complies with the applicable provisions of this code.

18 Section 5. Subject to state laws. A person unable to
19 show that it is subject to the jurisdiction of another
20 agency of this state or any subdivision thereof or the
21 federal government is subject to all appropriate provisions
22 of this code regarding the conduct of its business.

23 Section 6. Disclosure. (1) A production agency or
24 administrator that advertises, sells, transacts, or
25 administers the coverage in this state described in [section

1 2] and is required to submit to an examination by the
2 insurance commissioner under [section 4] shall, if such
3 coverage is not fully insured or otherwise fully covered by
4 an admitted life or disability insurer or nonprofit health
5 service corporation, advise every purchaser, prospective
6 purchaser, and covered person of such lack of insurance or
7 other coverage.

8 (2) An administrator that advertises or administers
9 the coverage in this state described in [section 2] and is
10 required to submit to an examination by the commissioner
11 under [section 4] shall advise any production agency of the
12 elements of the coverage, including the amount of
13 "stop-loss" insurance in effect.

14 Section 7. Codification instruction. This act is
15 intended to be codified as an integral part of Title 33, and
16 the provisions of Title 33 apply to this act.

-End-

HOUSE BUSINESS AND INDUSTRY COMMITTEE

Chairman, Rep. Jerry Metcalf, called the Business & Industry Committee to order on February 7, 1983, at 9:00 a.m. in Room 420 of the Capitol Building, Helena, Montana. All members were present except Rep. Ellerd, Rep. Howe, and Rep. Fagg who were excused.

HOUSE BILL 607

REP. JAN BROWN, District 32, sponsor, opened by saying HB 607 is a consumers' bill that would require financial institutions to pay interest on money placed in escrow accounts. It seems only logical that if a financial institution is able to use our money that we must keep in escrow accounts, they ought to be paying us interest for the use of that money. She said she knows of one person who does receive interest on the money in his escrow account, because he had his attorney write that provision into the contract on his home. Many people are not aware that this can be done. (Exhibit #1)

PROPOSERS:

DON HARRIOTT, Helena resident, submitted a case history of how much it cost him to loan money to the bank on his escrow account without his concurrence. He has owned the home for a year and would have earned \$81.41 if his escrow money had been paying interest in a money market certificate. He said this would amount to a large sum over the years of paying a home off. He offered an amendment to show the rate of interest that the escrow account would earn to guard against the bank lowering the rate to 1%. (Exhibit #2)

REP. NISBET said he would like to go on record as supporting HB 607.

BEV HARRIOTT, Helena resident, is in favor of HB 607.

OPPOSERS:

JOHN CADBY, Montana Banker's Association, said they have many problems with this bill. It appears to be a pro-consumer bill but it is actually an anti-consumer bill. He said banks make direct payments to the counties twice a year that covers thousands of home owners. He doesn't think any county would like to rely upon each home owner to pay these taxes. It will result in increased delinquencies and increased costs in every county in the state. A list of his questions concerning the bill and explanations on his points is attached as Exhibit #3.

AGNES HOFFMAN, Vice President, Security Bank, Billings, said the term "transaction" in the bill leaves them wondering what "transaction" means. Does it include every situation where escrow is needed? She said county treasurers are concerned about processing individual accounts. Some lenders in Montana

FEBRUARY 7, 1983

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Business & Industry Committee

REP. FABREGA: Aren't most large homes financed by conventional loans? (yes) Aren't those loans under escrow?

MS. HOFFMAN: No, not under Federal Home Loan requirements. The State Board of Investments require escrow. They want to be assured there is no delinquency because of taxes.

HOUSE BILL 578

REP. RON MILLER, District 42, sponsor, opened said this bill creates new law giving the insurance department the power to determine jurisdiction over providers of health care benefits.

JANE MITCHELL, Attorney for Montana Insurance Department, said this bill was written based on a model act adopted by the National Association of Insurance Commissioners in 1982. The bill is necessary because many other states have had solvency problems with Multiple Employers Trusts which do not qualify as ERISA programs. These entities have gone broke in other states and left people without health care coverage.

(Exhibit #4) She proposed a list of amendments which legal council will work up for presentation to the committee.

TERRY MEAGHER, Chief Examiner, Montana Insurance Department, said many states have adopted laws like HB 578. He proposed an amendment to Section 4, page 2, line 12 to include the word "commissioner." It would give commissioners authority to contract examiners. He said even if this bill passes they would have no means of funding it. Therefore, he proposed an amendment which would say the person or entity being examined would pay the expenses directly to the commissioner.

NORMA SEIFFERT, Montana Insurance Department, said she has found many out-of-state trusts to be pretty risky and she would like some means of examining them. She believes it would make these people a little more cautious when dealing in Montana. She read a letter of support from the Kemper Insurance Group.

OPPONENTS: none

QUESTIONS:

REP. KADAS: Why don't we have a revolving fund? Mr. Meagher: A couple of years ago we tried to establish that procedure but the legislature didn't like the idea of a separate fund and it was killed. Rep. Kadas: You are opening the door for corruption with people paying the examiner directly. Mr. Meagher: The rates are established through the NAIC annually. We do account for the money totally and it is looked at by the legislative auditor. The company signs a receipt for what they have paid.

REP. FABREGA: Would the company being examined request it?

Mr. Meagher: We would try to maintain their credibility and if we could not, we would request the exam. Rep. Fabrega: How can you send someone to another state without their request and say they must pay for it? Ms. Mitchell: This is for people who

Testimony of the Montana Insurance Department on H.B. 578.

This legislation is based on a model act adopted by the National Association of Insurance Commissioners (NAIC) in Philadelphia in June of 1982.

The purpose of this bill is to give the Montana Insurance Department authority to examine health care providers to determine whether they fall under the jurisdiction of the Department. The bill is designed to control Multiple Employer Trusts which are not qualified ERISA exempt programs. The bill provides that if the entity can provide the commissioner with an appropriate certificate, license or other document issued by a state or federal agency permitting it to provide health care coverage, then the Insurance Department will not regulate it. If the entity is unable to show it is subject to another state agency or the federal government, then the Montana Insurance may examine it to determine whether it is subject to the insurance code and to determine its solvency.

The bill also provides that production agencies or administrators who advertise, sell, transact or administer coverage which is not provided by an admitted insurance company or nonprofit health service corporation advise prospective purchasers or purchasers of the lack of insurance or other coverage.

Further an administrator who sells such coverage, must advise any production agency of the elements of the coverage.

The bill is necessary because many other states have had solvency problems with Multiple Employers Trusts which do not qualify as ERISA programs. These entities have "gone broke" in other states and left people without health care coverage.

VISITOR'S REGISTER

BILL AB 578 HOUSE _____ COMMITTEE _____
DATE _____
SPONSOR _____

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

February 7, 1983

House Bill No. 578

Suggested committee amendment:

Section 4, Line 17 after the last sentence ending "applicable provisions of this code." add another sentence "The person or entity being examined shall pay the charges and expenses directly to the person appointed by the commissioner to perform such examination in accordance with the provisions of Section 33-1-413(1), MCA."

HOUSE BUSINESS & INDUSTRY COMMITTEE

Chairman, Rep. Jerry Metcalf, called the Business & Industry Committee to order on February 8, 1983, at 9:00 a.m. in Room 420 of the Capitol Building, Helena, Montana. All members were present.

HOUSE BILL 571

REP. LES KITSELMAN, District 60, sponsor, opened by saying this bill is basically in the best interest of the consumer. It is a model bill which was adopted by the National Association of Insurance Commissioners (NAIC). This bill permits the policy loan interest rates on a life insurance policy to be adjusted according to rules provided in the bill. Policy loan interest now is stipulated in the policy and is usually lower than current market rates.

PROPOSERS:

LESTER H. LOBLE, II, American Council of Life Insurance, said whole life insurance policies must contain a provision permitting the policy owner to borrow money from the insurance company and secure the loan by the cash value of the policy. It is only fair that the interest on policy loans reflect current market conditions. A policy with an adjustable loan rate will have a bigger dividend than a policy with an 8% loan rate. Small policyholders are subsidizing the borrowing of the large policyholders. HB 571 proposes a dynamic measure of the maximum loan rate. On new policies, the loan rate could be structured so that its maximum rate is the Moody's composite index. If the index went up, the interest rate could go up. If the index came down then interest rates would have to come down. Lowering the rate is mandatory under this bill. A company may choose to remain under the existing law or insert the adjustable loan rate in its policies. (Exhibit #1)

ED HAUSKEN, Montana Association of Life Underwriters, said his organization supports this bill.

NORMA SEIFFERT, Montana Insurance Department, said she heartily endorses this bill.

OPPOSERS: none

QUESTIONS:

REP. WALLIN: If the interest rate goes down is a person locked into the premium so the company gets a greater spread?

WILLIAM CARROLL, American Council of Life Insurance: This bill does not deal with premiums. The customer may make a loan securing it with the policy. The law makes it 8% whether the interest rate goes up or down. The bill would give the company a choice of selling those policies or a new policy with a variable interest rate so the maximum interest rate the company could charge would follow the market place rate.

REP. FABREGA: Moody's is a pretty good rate of interest. It's generally lower than commercial loans? Mr. Carroll: Yes.

FEBRUARY 8, 1983

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Business & Industry Committee

Question: Motion failed 13-6. (Roll call vote attached)

REP. FABREGA: I move to reverse the vote to DO NOT PASS.

Question: Motion carried unanimously.

HOUSE BILL 578

REP. KADAS: Are the companies this bill is aimed at illegal?

REP. KITSELMAN: They are fly-by-night people who come in and get to senior citizens, etc.

REP. FABREGA: How do they differ from Blue Cross who is not regulated?

REP. KITSELMAN: They are a provider. They are non-profit.

REP. FABREGA: I move the prepared amendments with the exception of No. 5. (Exhibit #2)

Question: Motion carried unanimously.

REP. FABREGA: I move HOUSE BILL 578 DO PASS AS AMENDED.

REP. METCALF: If they are under no other jurisdiction, then they will come under the jurisdiction of the state.

REP. KADAS: Why can't we say if they don't offer to pay for the audit, we get an order to cease and desist?

REP. METCALF: That would put the burden of proof on the company.

REP. FABREGA: The legitimate ones will provide documentation.

Question: Motion carried unanimously.

HOUSE BILL 607

REP. KITSELMAN: I move DO NOT PASS. Many people send their checks all over the country. I don't see how we can ask Texas or Iowa to issue this type of interest. The larger mortgages that would stand to benefit the most from this are generally handled by a commercial loan.

REP. FABREGA: Jan Brown realizes the technical problems with this bill. I make a substitute motion to TABLE the bill for public relation reasons.

REP. HARPER: Everyone of us knows that the banks are making money from these charges.

Question: Motion to TABLE HOUSE BILL 607 carried unanimously.

HOUSE BILL 290

REP. FABREGA: I visited with Don Allen and we are beginning to understand this...if we have a refinery that sells all its product to wholesale distributors or importers, they should not pay the \$200. But if they also use their own trucks to deliver directly to service stations, then they should pay the \$200. This fee overcomes the cost of bringing in the new people.

REP. METCALF: This makes it possible for them to forego paying that big tax up front? Rep. Fabrega: Yes. We need a good definition for separating each of these people. It's very confusing.

REP. KADAS: There is going to be some who do not opt to pay the \$200 fee. How are they going to pay the tax?

REP. METCALF: If all wholesalers opt to become distributors then the tax is sent on to the retailer.

STANDING COMMITTEE REPORT

Page 1 of 2

February 8

1983

MR. **SPEAKER:**

We, your committee on **BUSINESS & INDUSTRY**

having had under consideration **HOUSE** Bill No. **578**

first reading copy (white)
color

A BILL FOR AN ACT ENTITLED: "AN ACT TO GIVE THE MONTANA INSURANCE DEPARTMENT JURISDICTION TO DETERMINE JURISDICTION OVER PROVIDERS OF HEALTH CARE BENEFITS; TO MAKE SUCH A PROVIDER SUBJECT TO THE MONTANA INSURANCE CODE IF IT CANNOT SHOW THAT IT IS SUBJECT TO ANOTHER JURISDICTION; AND TO REQUIRE DISCLOSURE TO PURCHASERS OF SUCH HEALTH CARE BENEFITS CONCERNING WHETHER OR NOT THE PLANS ARE FULLY INSURED."

Respectfully report as follows: That **HOUSE** Bill No. **578**

BE AMENDED AS FOLLOWS:

1. Title, line 7

Following: "BENEFITS?"

Insert: "TO INDICATE HOW EACH PROVIDER OF HEALTH CARE BENEFITS MAY SHOW UNDER WHAT JURISDICTION IT FALLS; TO ALLOW FOR EXAMINATIONS BY THE STATE IF THE PROVIDER OF HEALTH CARE BENEFITS IS UNABLE TO SHOW IT IS SUBJECT TO ANOTHER JURISDICTION;"

2. Page 2, line 14

Following: "agency"

Insert: "of this state or a subdivision thereof or the federal government"

3. Page 2, line 16

Following: "person"

Insert: "or entity"

**XXXXXX
XXXXXX
XXXXXX**

DO PASS

4. Page 2, line 17
Following: "person"
Insert: "or entity"

5. Page 2, line 18
Following: "person"
Insert: "or entity"

6. Page 3, line 1
Following: "and"
Insert: "that"

AND AS AMENDED

DO PASS

H.B. 578

Exhibit #2

1. Title, line 7 19
Following: "BENEFITS"
Insert: "TO INDICATE HOW EACH PROVIDER OF HEALTH CARE BENEFITS MAY SHOW UNDER WHAT JURISDICTION IT FALLS; TO ALLOW FOR EXAMINATIONS BY THE STATE IF THE PROVIDER OF HEALTH CARE BENEFITS IS UNABLE TO SHOW IT IS SUBJECT TO ANOTHER JURISDICTION;"
2. Page 2, line 14
Following: "agency"
Insert: "of this state or a subdivision thereof or the federal government"
3. Page 2, line 16
Following: "person"
Insert: "or entity"
4. Page 2, line 17
Following: "person"
Insert: "or entity"
5. Page 2, line 17
Following: "code"
Insert: "The person or entity being examined shall pay the charges and expenses directly to the person appointed by the commissioner to perform such examination in accordance with the provisions of Section 33-1-413(1), MCA."
omit #5
5. Page 2, line 18
Following: "person"
Insert: "or entity"
6. Page 3, line 1
Following: "and"
Insert: "which"



Rep. Jerry Metcalf

STATE OF MONTANA

OFFICE OF
E. V. "SONNY" OMHOLT

STATE AUDITOR
COMMISSIONER OF INSURANCE
SECURITIES COMMISSIONER
CENTRAL PAYROLL SYSTEM

HELENA, MONTANA 59604

February 8, 1983

TO: Representative Ron Miller

FROM: Terry Meagher, Montana Insurance Department

RE: Summary of Testimony in Support of HB578 -
To Determine Jurisdiction of Health Care Trusts.

This legislation is necessary for the benefit and protection of Montana residents to plug a loophole created by the federal government when they passed the Employee Retirement Income Security Act (ERISA) of 1974. Prior to that, Congress felt that regulation and taxation of the insurance business by the states was in the public interest with the McCarran-Ferguson Act which was passed on March 9, 1945, as Public Law 15. This law specifically exempted the insurance companies from the Sherman Act, the Clayton Act, and the Federal Trade Commission Act until July 1, 1948. After that date, the fair-trade and antitrust acts became applicable to the insurance business to the extent that such business was not regulated by state law. Congressional deference to state regulation in any areas of interstate commerce can be justified only as long as regulation by the states continues to be in the public interest.

Apparently, Congress felt that there was a need to provide for trusts to act as unlicensed accident and health insurers when they passed the ERISA ACT of 1974 (copy attached as Exhibit A). When this was passed, it really did not provide for eligibility criteria nor enforcement by the U.S. Dept. of Labor. This opened the loophole for large numbers, possibly hundreds, of unscrupulous entrepreneurs who promote trust arrangements offering health care benefits and to cleverly side-step state regulation and certification by claiming to be an ERISA-exempt Multiple Employer Trust (MET). The U. S. Dept. of Labor requires no prior approval or certification BEFORE that entity can begin selling its insurance program. Information on the "Preemption Under ERISA" is found in the Catholic University Law Review Volume 28:168, pp 187 through 199 (copy attached as Exhibit B). A discussion of METs is found on p. 193 and five basic criteria for a qualified plan are found at footnote 180 on p. 195.

The only other current method by which a trust can legally operate in Montana is:

1. if it meets the group eligibility requirements of Sec. 33-20-1001 and 33-22-501, MCA; and
2. if licensed agents solicit the program; and
3. if a licensed insurer indemnifies the liabilities of the coverage.

Then the funds merely flow through the trust from the payees to the insurer and the trust becomes the master policyholder. Each individual participant receives a certificate of coverage with only a summary of provisions and benefits.

The unscrupulous and illegal operators have cost the American public millions of dollars (estimated) in unpaid claims and have caused legitimate operations to be in favor of some sort of regulation. (copy of letter from the Kemper Insurance Group counsel, Douglas A. Doty, is attached as Exhibit C). Copies of other states' concern to this affect are attached as follows:

Exhibit D: California press release dated 9/13/82
Exhibit E: Illinois press release dated 11/29/82
Exhibit F: Utah law and supporting regulation 82-2
dated 8/25/82

Other states, of which I am aware, that have passed versions of the NAIC Model Jurisdiction Act are: Utah, California, Michigan, and Illinois.

I am still concerned with the means of implementing the examination provision of H.B. NO. 578 at p.2, Section 4. Having the authority to examine a trust without some provision to pay an examiner doesn't have much teeth in it. However, after discussing it with the Commissioner after the hearing, he asked that we withdraw the proposed language for a committee amendment to reference such costs and procedures to Section 33-1-413 (1), MCA. This will leave the bill essentially as a copy of the NACI Model Act but without the financial ability to perform any examinations. Possibly the budget appropriation committee may see fit to fund this by increasing the Department's contracted services budget in the 1986-87 biennium or sooner if the present legislative committees desire to make some provision for earlier implementation. This concern stems from the fact that Montana's examiners are hired on a contract basis and are paid directly by the person being examined rather than actually being on the state payroll as employees.

In addition to the problems and financial losses that these illegal METs are causing the state residents, the State of Montana is losing its 2-3/4% premium tax on every illegal premium dollar that they collect and take out of state.

Several court cases that may be of interest are attached as follows:

Exhibit G: St. Paul Elec. Workers Welfare Fund vs. Michael D. Markman, Minnesota Commissioner of Insurance, 490 Federal Supplement, Civ. No. 3-78-269, pp. 931-935.

Exhibit H: Hewlett-Packard Co. vs Willie R. Barnes, California Commissioner of Corporation, 571 Federal Reporter, 2d Series, pp 502-505.

MINUTES OF THE MEETING
BUSINESS AND INDUSTRY COMMITTEE
MONTANA STATE SENATE

March 9, 1983

The meeting of the Business and Industry Committee was called to order by Chairman Allen Kolstad on March 9, 1983, at 10:05 a.m., in Room 404, State Capitol.

ROLL CALL: All members were present with the exception of Senator Fuller who was excused.

CONSIDERATION OF HOUSE BILL 219: An act amending sections 30-13-202, and 30-13-205, MCA, relating to when registration of an assumed business name is prohibited; and providing an effective date.

Representative Tom Hannah stated this bill was by request of the Secretary of State. It amends the law that deals with registering under assumed business names. It is a disclosure bill.

PROPOSERS TO HOUSE BILL 219: Cliff Christian, Secretary of State's Office, stated the Model Business Corporation Act attempts to make uniform the filings they have across the country. In this case the filing under an assumed business name could in fact, if everything is uniform, make one file. It attempts to make filings uniform under assumed business names, trademarks and limited partnerships. He handed the committee sections which have already been passed. (Exhibit No. 1) and a copy of Title 35 that other states have passed or are passing portions of the Model Business Act. (Exhibit No. 2) He went through the subsections of the bill. This will make it more uniform and other states will be adopting similar language.

There were no further proposers and no opponents.

The hearing was closed on House Bill 219.

CONSIDERATION OF HOUSE BILL 218: An act to amend section 18-8-103, MCA, to broaden the exemption of registered professional engineers, surveyors, real estate appraisers, or registered architects from the laws regulating private consultants employed by stage agencies; and providing an immediate effective date.

Representative Les Kitselman stated this clarifies a gap in the consultant law. During the development of the selection procedure it was determined by the counsel for the Department of State lands that they could not use the exemption for engineers for a federally funded project to inspect private mines. This type of conflict also occurred in some other federal grant funds. It was suggested by the Department of State Lands that this bill be used to clear this up. It would provide that federal funds are to be treated the same way as handled by the State. He urged passage of this bill.

PROPOSERS TO HOUSE BILL 218: Sonny Hanson, Montana Technical Council, stated they support this bill. It evolved from the passage of Representative Moore's house bill last session. In developing the selection process it was determined that the State Lands stated they could not implement this type of process for these funds. Therefore, they suggested that we come in with this particular amendment. The

Senator Christiaens stated this bill does not specifically mention mobile homes yet that is the only testimony that has come up. Mr. Hill stated the transfer of equity refers almost exclusively to the transfer of mobile homes. It could be used in others but it has not been done.

Senator Christiaens asked how is this going to fit in with the variable interest rates? Mr. Hill stated he knows of no bank that is offering variable interest rates. They use a specialized contract study when they get into variable interest rates.

The hearing was closed on House Bill 267.

CONSIDERATION OF HOUSE BILL 578: An act to give the Montana Insurance Department jurisdiction to determine jurisdiction over providers of health care benefits; to indicate how each provider of health care benefits may show under what jurisdiction it falls; to allow for examinations by the state if the provider of health care benefits is unable to show it is subject to another jurisdiction; to make such a provider subject to the Montana Insurance Code if it cannot show that it is subject to another jurisdiction; and to require disclosure to purchasers of such health care benefits concerning whether or not the plans are fully insured.

Representative Ron Miller presented the bill to the committee. His written testimony is attached to the minutes. (Exhibit No. 4)

PROPOSERS TO HOUSE BILL 578: Jane Mitchell, Montana Insurance Department, stated the bill is designed to plug a loophole on Federal and State jurisdictions. It puts the burden on the entity to show that it is truly exempt and it puts the burden on the person claiming exemption. She proposed two amendments. Page 1, line 24, following "person" insert "or other entity" and page 2, line 5, following "person" insert "or other entity".

Lester H. Loble, II, American Council of Life Insurance, stated he supported this bill. His written testimony is attached along with his proposed amendments. (Exhibit No. 5)

QUESTIONS FROM THE COMMITTEE: Senator Regan asked on page 2, lines 10 through 13 it does not address the problem of another state. Do you agree with Mr. Loble's amendments? Ms. Mitchell stated yes they have seen them and they have no objections.

Senator Christiaens asked do these not fall under the jurisdiction of the insurance department now? Ms. Mitchell stated this gives us a presumption of authority. It clarifies and strengthens it.

Senator Christiaens asked are these plans now currently backed by capital and surplus funds? Mrs. Seiffert stated no because it is questionable under what jurisdiction it would fall.

Senator Christiaens asked then is that true of both profit and nonprofit groups? Mrs. Seiffert stated they are nonprofit because a majority of

them have a solvency problem.

In closing, Representative Miller stated this is a "catch 22" situation which needs to be addressed.

The hearing was closed on House Bill 578.

ACTION ON HOUSE BILL 578: Senator Dover made the motion that the proposed amendments from Ms. Mitchell and Mr. Loble Be Adopted. Senator Lee seconded the motion.

The Committee voted unanimously, by voice vote, with the exception of Senator Fuller who was excused, that the proposed amendments to HOUSE BILL 578 BE ADOPTED.

Senator Dover made the motion that House Bill 578 As Amended Be Concurred In. Senator Lee seconded the motion.

The Committee voted unanimously, by voice vote, with the exception of Senator Fuller, that HOUSE BILL 578 AS AMENDED BE CONCURRED IN.

Senator Dover will carry this bill on the floor.

ACTION ON HOUSE BILL 218: Senator Goodover made the motion that House Bill 218 Be Concurred In. Senator Christiaens seconded the motion.

The Committee voted unanimously, by voice vote, with the exception of Senator Fuller who was excused, that HOUSE BILL 218 BE CONCURRED IN.

Senator Goodover will carry this bill on the floor.

ACTION ON HOUSE BILL 219: Senator Lee made the motion that we adopt the proposed amendment on page 2, lines 1, 6, and 10, following "contains" insert "or there is added at the end of the name,". There is no substance change, it just makes it clearer.

Staff Attorney Petesch stated there is no substance to this amendment. Senator Dover seconded the motion.

The Committee voted unanimously, by voice vote, with the exception of Senator Fuller who was excused that the proposed amendments to HOUSE BILL 219 BE ADOPTED.

Senator Dover made the motion that House Bill 219 As Amended Be Concurred In. Senator Lee seconded the motion.

The Committee voted unanimously, by voice vote, with the exception of Senator Fuller, that HOUSE BILL 219 AS AMENDED BE CONCURRED IN.

Senator Dover will carry this bill on the floor.

ACTION ON HOUSE BILL 267: Senator Christiaens stated he has a problem with this bill in that it refers to all retail sales and transfers of

ROLL CALL

BUSINESS AND INDUSTRY COMMITTEE

48th LEGISLATIVE SESSION -- 1983

DATE 3-9-83

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STANDING COMMITTEE REPORT

March 9

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MR. PRESIDENT

We, your committee on BUSINESS AND INDUSTRY

having had under consideration HOUSE Bill No. 578

MILLER (HOVER)

Respectfully report as follows: That HOUSE Bill No. 578
be amended as follows:

1. Page 1, line 24.
Following: "person"
Insert: "or other entity"

2. Page 2, line 5.
Following: "person"
Insert: "or other entity"

3. Page 2, line 7.
Following: "this"
Insert: "or another"

4. Page 2, line 11.
Following: "this"
Insert: "or another"

5. Page 2, line 18.
Following: "THIS"
~~XXXXX~~
INSERT: "or another"

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HOUSE BILL 578

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6. Page 3, line 1.
Following: "this"
Insert: "or another"

AND, AS SO AMENDED,

BE CONCURRED IN

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Testimony of the Montana Insurance Department on H.B. 578.

This legislation is based on a model act adopted by the National Association of Insurance Commissioners (NAIC) in Philadelphia in June of 1982.

The purpose of this bill is to give the Montana Insurance Department authority to examine health care providers to determine whether they fall under the jurisdiction of the Department. The bill is designed to control Multiple Employer Trusts which are not qualified ERISA exempt programs. The bill provides that if the entity can provide the commissioner with an appropriate certificate, license or other document issued by a state or federal agency permitting it to provide health care coverage, then the Insurance Department will not regulate it. If the entity is unable to show it is subject to another state agency or the federal government, then the Montana Insurance may examine it to determine whether it is subject to the insurance code and to determine its solvency.

The bill also provides that production agencies or administrators who advertise, sell, transact or administer coverage which is not provided by an admitted insurance company or nonprofit health service corporation advise prospective purchasers or purchasers of the lack of insurance or other coverage.

Further an administrator who sells such coverage, must advise any production agency of the elements of the coverage.

The bill is necessary because many other states have had solvency problems with Multiple Employers Trusts which do not qualify as ERISA programs. These entities have "gone broke" in other states and left people without health care coverage.

POSITION OF AMERICAN COUNCIL OF LIFE INSURANCE
ON MONTANA H.B. 578

Statement of Position

The Council supports the efforts of the Montana Insurance Department to exercise jurisdiction over uninsured multiple-employer trusts doing business in Montana. We do, however, recommend an amendment to this bill which would clarify its intended purpose while retaining the authority the Department seeks. We suggest that H.B. 578 be amended as follows:

- Line ^{11, 12}~~3~~: "another agency of this or another state or any subdivision thereof or
- Line ^{18, 19}~~7~~: "another agency of this or another state or any subdivision thereof or
- Line ^{1, 2, 3}~~20~~: "agency of this or another state or any subdivision thereof or the

Background

In the wake of repeated insolvencies of uninsured multiple-employer trusts, insurance commissioners across the country began to seek solutions which would aid persons covered under such trusts who suddenly found themselves without any protection. The insolvencies of these trusts received considerable publicity, particularly as a result of occurrences in the State of California. That state's Insurance Department developed a proposed bill which was submitted for consideration by the National Association of Insurance Commissioners (NAIC). Given the ever-increasing urgency of this problem, the NAIC quickly adopted the California proposal as a model bill.

H.B. 578 is an exact duplicate of this model bill.

As of this time, two states have enacted legislation along the lines proposed in H.B. 578. The first state to act was California, the state which initiated the original proposal. Recognizing that the proposal could be misconstrued to apply to fully-insured contracts issued in another state, the California law was modified from the proposal adopted by the NAIC. That modification, made in California, is the same modification which we propose. The other state which has taken similar legislative action is Illinois and that law also contains the modification we propose for H.B. 578.

Analysis

By following the original NAIC model, the exemption language would not extend to a group insurance contract issued in another state and, therefore, subject to the supervision of that state's insurance department. If an out-of-state group contract covered Montana residents, the Montana Department of Insurance would have certain, specified jurisdiction. The Unfair Trade Practices Act of Montana and other selected portions of the insurance code would apply. On the other hand, the contents of the contract, and other supervisory provisions would be left to the state where the contract was issued. This careful and long-standing balance between the states has proven to be an effective and efficient means of regulating group insurance contracts. Moreover, we are not aware of any intention of the Montana Insurance Department to alter this balance. As a result, the amendments we propose would not in any

way diminish the authority sought by the Department to exercise jurisdiction over uninsured multiple-employer trusts.

By following the form adopted in other states (with the amendment language), Montana could assure some sense of uniformity among the states and could receive the benefit of actions taken under an identical statute in another jurisdiction.

In all other respects, the Council is pleased to support this proposal.

3-9-83

BUSINESS & INDUSTRY

VISITORS' REGISTER

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(This sheet to be used by those testifying on a bill.)

NAME: LESTER H. LOBLE, II DATE: 3/9/83

ADDRESS: POB 176 HELENA

PHONE: 442 0070

REPRESENTING WHOM? American Council of Life Insurance

APPEARING ON WHICH PROPOSAL: HRS 578

DO YOU: SUPPORT? _____ AMEND? X OPPOSE? _____

COMMENT: ATTACHED

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.